

REMARKS

Prior to the present amendment, claims 33-36 and 38-51 were pending. By the present amendment, claim 47 has been cancelled and claims 52-58 have been added. Therefore, claims 33-36 and 38-58 are now pending in the present application. The limitation of claim 47 has been incorporated into claim 39, thus claim 47 has been cancelled. Claims 39-46 and 48 are currently withdrawn from consideration. Support for new claims 52-58 can be found in the originally filed claims. Support for the non-detachable limitation of claim 1 can be found in original claim 7.

As an initial matter, Applicants note that previous limitations introduced into the claims have been removed and Applicants rescind the accompanying arguments made with respect to these limitations.

Restriction/Election

On October 20, 2006, the Examiner required an election of species between: Species I: plastically deformable lining; Species II: wrinkled lining; and Species III: elastic lining. In response, on November 16, 2006, Applicant elected Species II, which is directed to claims 33-36 and 38-51. The Applicant agrees that claims 39-48 are generic.

The Examiner has withdrawn claims 39-48 from consideration because he believes that there is no suggestion to combine the wrinkled embodiment with the prosthesis of Figs. 5 and 6. However, in the original disclosure, original claim 26 is directed to an endoprosthesis with a lateral opening and a wrinkled lining, thus there is adequate support for this combination. Although not explicit, when the specification is read as a whole, it is clear that the embodiments in Figs. 5 and 6 can be combined with a lining. For instance, on page 18, the specification states, "the lining in all the embodiments..." Thus, claims 39-48 are generic. However, the wrinkled lining limitation has been added to claim 39 and thus claims 39-48 now fall specifically within Species II.

Furthermore, Applicant believes the restriction is wholly improper since it was done after a search had already been performed. Thus there was no undue burden in completing the examination of the already-searched claims.

35 U.S.C. 103 Rejection

Claims 33-36, 38 and 49-51 stand rejected under 35 U.S.C. 103(a) as being allegedly rendered obvious over Schwartz (5,957,971). Schwartz shows a stent 34 that has a wrinkled fibrin film 32 wrapped around the outside of the stent 34 that stays on the stent only until it is delivered to the site. Thus, the coating of Schwartz is detachably connected to the stent, as it is only intended to stay on during delivery (column 5, lines 34-37). There is no motivation or teaching in Schwartz to make the film non-detachably connected to the stent. For at least this reason, Applicants submit that claim 33 (and all claims that depend therefrom) are not rendered obvious by Schwartz.

Regarding further at least claims 38, 50 and 58, the Examiner states that pores would have been inherent from the incorporation of controlled rate microcapsules mentioned in Schwartz. However, microcapsules are not necessarily related to pores. Microcapsules are known to encase a drug and biodegrade or otherwise burst to release the drug.¹ The above-referenced claims recite pores, or holes, in the lining to release the medication into the body. There is no teaching or disclosure in Schwartz of pores and there is no motivation to provide them. Schwartz has a film of fibrin 32 that is placed directly on the treatment area of the body, that biodegrades to release the fibrin. Because there is no medication held inside the film to release, there is no motivation to modify this film to have pores. For at least this reason, claims 38, 50 and 58 (and all claims that depend therefrom) are not rendered obvious by Schwartz.

Regarding further at least claim 39, Schwartz does not teach three expandable fluid openings.

Regarding further at least new claim 56, Schwartz does not teach “a lining being adapted to prevent release of the medication when the structure is in the initial state and allow release of the medication when the structure is in the expanded state.” The fibrin film of Schwartz has no mechanism to prevent drug release during implantation. Accordingly, Applicants submit that claim 56 (and all claims that depend therefrom) are not rendered obvious by Schwartz.


¹ It should be noted that Schwartz does not specifically describe microcapsules. Rather, Schwartz cites a number of patents that describe microcapsules. None of these references mention pores.

CONCLUSION

The Applicants respectfully submit that this application is now in condition for allowance. Should any questions arise, the Examiner is invited to contact the undersigned at the number given below. The Commissioner is authorized to charge any additional necessary fees or to credit any overpayments to Deposit Account No. 11-0600.

Respectfully submitted,
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